

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Beazer Developments West, Inc.  
731 Sansome Street, Suite 300  
San Francisco, California 94111

<b>COPY</b>	of Document Recorded
APR 15 1991	<b>91-124611</b>
on.....	Has not been compared with original.
SAN BERNARDINO COUNTY RECORDER	

COVENANT RESTRICTING  
USE OF PROPERTY

ARTICLE I

GENERAL PROVISIONS

1.01 Introduction. The property described in Exhibit A attached hereto (the "Property") was owned and operated by Koppers Company, Inc., a Delaware corporation, and used as a creosote wood treatment plant and products storage site. On or about 1985, this use ceased and thereafter the Property was remediated under the oversight of the State of California Regional Water Quality Control Board, which determined that the significantly contaminated soils had been removed from the site, as set forth in a letter dated October 14, 1988, a copy of which is attached hereto as Exhibit B. The remediation of the Property was reviewed by the State of California Department of Health Services, Permitting Unit and the State of California Department of Health Services Toxic Substance Control Program, Site Mitigation Unit. As a result of the foregoing reviews, the

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Property has been designated as closed as defined by the California Code of Regulations, Title 22, Section 66027 and upon recordation of this Covenant Restricting Use of Property, the Property will be delisted from the Hazardous Substance Clean-up Bond Expenditure Plan.

The purpose of this Covenant is to protect public health and the environment by limiting the use of the Property to commercial and/or industrial uses. It is primarily a precautionary measure taken to insure that in the event of soil disturbance, such as excavation, appropriate measures are taken to prevent worker or public exposure. The existence of this Covenant does not imply that continued presence of contamination or hazardous waste has been confirmed on the Property. By entering into this Covenant, Owner shall not be deemed to have admitted that this Covenant is required for the Property or for any other property owned by Owner in the State of California.

1.02 Provisions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective

successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Section 25222.1(a) of the Health and Safety Code and run with the land pursuant to Section 25222.1(a). Each and all of the Restrictions are enforceable by the Department of Health Services.

1.03 Concurrence Of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.04 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II  
DEFINITIONS

2.01 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.02 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.03 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

2.04 Department. "Department" shall mean the California State Department of Health Services and shall include its successor agencies, if any.

ARTICLE III  
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions On Use. Covenantor promises to restrict the use of the portion of the Property as described in Exhibit A to uses which are zoned either "Industrial" or "Commercial" under the applicable zoning ordinance of the City of Ontario at the time such use is proposed; provided that if the proposed use is permitted only because of a change in such zoning

ordinance after the date of execution of this covenant, the Department may prohibit such use if it finds it to be inconsistent with public health and safety.

3.02 Conveyance of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph.

Violation of the Covenant shall be grounds for the Department to enforce civil and criminal actions against the Owner as provided by law, by administrative order, or by reason of this Covenant.

3.04 Notice In Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein is subject to certain restrictions as more fully set forth in that certain Covenant Restricting Use of Property dated \_\_\_\_\_, recorded in the Official Records of San Bernardino County, State of California, at \_\_\_\_\_."

#### ARTICLE IV

##### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, Health & Safety Code.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, Health & Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V

### MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of this Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: Beazer Developments West, Inc.  
731 Sansome Street, Suite 300  
San Francisco, CA 94111

With a copy to: Department of Health Services  
Toxic Substances Control Division  
Regional Office  
245 W. Broadway, Suite 350  
Long Beach, CA 90802  
Attention:

5.03 Partial Invalidity. If any portion of the Restriction set forth herein or terms is determined to be in

valid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Health Services. This instrument shall be recorded by the Covenantor in the County of San Bernardino within ten (10) days of the date of execution.

5.06 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER:

BEAZER DEVELOPMENTS WEST, INC.

By: 

Title: VICE PRESIDENT

DEPARTMENT OF HEALTH SERVICES

By: 

Title: REGIONAL ADMINISTRATOR



STATE OF California

COUNTY OF Orange

)  
) SS.:  
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On April 1, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared Tan Colin Gillis, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice President, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Christine S. Layland  
Notary Public in and for said  
County and State

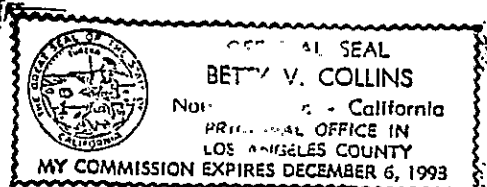
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

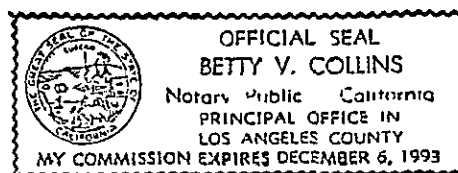
)  
) SS.:  
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On MARCH 27, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared JOHN A. HINTON, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as REG. ADMINS. of the Department of Health Services, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.



Betty V. Collins  
Notary Public in and for said  
County and State Betty V. Collins



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DESCRIPTION: THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TENTATIVE PARCEL MAP NO. 12401, UNRECORDED BEING A SUBDIVISION OF:

A PARCEL OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF LOT 3, BLOCK 20 OF TRACT 2244 AS PER MAP RECORDED IN BOOK 35 PAGES 50 THROUGH 56 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND SHOWN ON RECORD OF SURVEY MAPS FILED IN BOOK 10 PAGES 4 AND 5 OF RECORDS OF SURVEYS IN THE OFFICE OF SAID RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID SECTION 20; THENCE NORTH 0 DEGREES 27 MINUTES 45 SECONDS EAST, ALONG THE WESTERLY LINE THEREOF, 437.31 FEET TO THE SOUTHERLY LINE OF LAND (200 FEET WIDE) OF SOUTHERN PACIFIC RAILROAD COMPANY (NOW SOUTHERN PACIFIC TRANSPORTATION COMPANY) AS SHOWN ON SAID RECORD OF SURVEY MAP; THENCE NORTH 88 DEGREES 22 MINUTES 45 SECONDS EAST, ALONG SAID SOUTHERLY LINE, 1011.80 FEET TO A POINT; THENCE SOUTHEASTERLY AND SOUTHERLY, ON A CURVE TO THE RIGHT HAVING A RADIUS OF 382.24 FEET (TANGENT TO SAID CURVE AT LAST MENTIONED POINT BEARS SOUTH 58 DEGREES 47 MINUTES 03 SECONDS EAST), THROUGH A CENTRAL ANGLE OF 59 DEGREES 06 MINUTES 03 SECONDS, AN ARC DISTANCE OF 394.28 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES WEST, TANGENT TO SAID CURVE AT LAST MENTIONED POINT, 143.53 FEET TO THE SOUTHERLY LINE OF SAID SECTION 20; THENCE NORTH 89 DEGREES 41 MINUTES WEST, ALONG LAST SAID SOUTHERLY LINE, BEING ALSO ALONG THE CENTER LINE OF SLOVER AVENUE, 1198.28 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID PROPERTY LYING BELOW A DEPTH OF 500 FEET MEASURED VERTICALLY FROM THE CONTOUR OF THE SURFACE THEREOF; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OR THE PORTION OF SAID PROPERTY LYING ABOVE 500 FEET, MEASURED VERTICALLY FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH CALIFORNIA REGION  
INDIANA AVENUE, SUITE 300  
IRVINE, CALIFORNIA 92606  
TEL: (714) 782-4130



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PM 1252

October 14, 1988

Mr. David R. Kerschner  
Staff Program Manager  
Koppers Company, Inc.  
436 Seventh Avenue  
Pittsburgh, PA 15219

KOPPERS ONTARIO PLANT SITE REMEDIATION

Dear Mr. Kerschner:

We have completed our review of the confirmatory sampling data reported for the Koppers Ontario facility. Based on analytical results obtained for soil samples collected on June 15 and 16, 1988 and July 8, 1988, all significantly contaminated soils have essentially been removed from the site. Therefore, we have no objection to the backfilling of the excavated areas, provided that clean soils are utilized.

Thank you for your cooperation. Should you have any questions, please contact Mr. Shami of our Industrial Surveillance Section.

Sincerely,

Gary M. Litton, Chief  
Industrial Surveillance Section

cc: DOHS - Los Angeles, Attention: Elizabeth Lafferty  
DOHS - Northern California Section, Attention: Kim Ward  
San Bernardino County Environmental Health Services,  
Hazardous Waste and Toxics Control, Attention: Nancy  
Lingafeldt

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